

# Memo

To: **Montana Wheat & Barley Committee**

From: Terry Whiteside

Date: July 7, 2006

Re: **Transportation Report**



---

## **SENATE COMMERCE COMMITTEE – SURFACE SUBCOMMITTEE HOLDS HEARING ON RAIL COMPETITION ISSUES**

In what seems like a never-ending stream of hearings on rail competition issue, the Senate Surface Transportation SubCommittee of the Senate Commerce Committee was the next body to hold a hearing on June 21<sup>st</sup> and it was an interesting hearing. The hearing called by Senator Lott - MS at the request of Senator Burns - MT who is the lead sponsor on S919, Rail Competition bill and was also the debut of the latest GAO report on the captive shippers issues and problems.

The GAO report was very compelling – concluding that since the Staggers Rail Act of 1980 and the massive concentration of railroads in the 1980's and 1990's, a "lot more shippers are paying relatively less, but our concern is with a very small number that are paying very much more (Editor's Note: which studies indicated are between 20 and 30% of all railroad shippers)," stated JayEtta Hecker, Director of the GAO – Physical Infrastructure Issues. She went on to say that "none of the protection for shippers (at the STB) has been effectively implemented. The relief process is largely inaccessible."

As rail costs continue to rise at an unheralded pace, railroad customers have been voicing ever increasing levels of rhetoric as freight capacity continues to tighten on the nation's rail system.

**Senator Lott** started the hearing by expressing frustration with the inaction from the government regulators and the railroad private sector to take action on these captive shippers issues. "I will do whatever is necessary to make sure there isn't abuse in the rail industry. ...For example, if I find out railroads are using fuel surcharges to make money

off shippers, there's going to be a real problem. I consider that cheating and would be highly offended."

**Chairman Doug Buttrey** of the Surface Transportation Board (STB) found himself in the hot seat for **Senators Lott, Burns and Dorgan**. Their criticism centered on the lack of response by the STB in dealing with the captive shipper problems. Buttrey told the Senators that the STB is working on proceedings to address the fuel surcharges, small rate case and contracts between large and small railroads. But those efforts didn't satisfy Lott, Burns and Dorgan. They continued to hammer on Chairman Buttrey about the lack of real action by the STB on captive shipper issues. Senator Dorgan indicated that the statements were not satisfying to him and he has heard from the STB over and over – we are working on the 'problem' – just give us more time. Additionally, Chairman Buttrey indicated that while acknowledging the Senator's collective frustration, the STB continues to try and address some of the captive shipper concerns and further, in the Chairman's opinion, the STB does not need more authority to deal with rate and service issues. "We don't think we need more statutory authority. We think the current procedures just need to be more user friendly."

That comment especially did not satisfy the Senators on the Committee. Senator Burns from MT, "Nothing has been done, to address the rate and service issues since the industry was deregulated in 1980. I am troubled. There is no excuse that this hasn't been handled already." Senator Dorgan from ND chimed in, "if there's ever an Olympic event for doing studies, the STB would be a gold medal winner. We're cranky, The STB has not protected captive shippers. Clearly there is a failure here."

**Mr. Ed Hamburger**, of the Association of American Railroads, became visibly upset with the testimony of the shipper witnesses and started to chastise them openly for taking a stance of asking for increased competition. At one point, a member of the audience asked Mr. Hamburger, during a break, if he needed a Valium to continue.

The railroad industry continues, through their representation to Congress to thumb their noses at necessary changes to provide the balance mandated in the Staggers Rail Act of 1980. Namely, the Act called for, while ensuring railroad revenue adequacy, a protection for captive shippers from unreasonable rates and service practices that would develop as the railroads became more and more concentrated.

The **National Association of Wheat Growers** together with other Alliance for Rail Competition members USA Dry Pea and Lentil Council, Elenbaas Company and the National Barley Growers Association testified through **NAWG President Dale Schuler** to the Subcommittee that,

"Twenty years ago, there were multiple transcontinental railroads servicing farming regions of the country. However, today whole states, whole regions and now entire industries have become completely captive to single railroads as a result of many railroad mergers. In the wheat industry alone there are substantial pockets of captivity

in Texas, Oklahoma, Arizona, Colorado, Kansas, Nebraska, Wyoming, Idaho, South Dakota, Minnesota, North Dakota, Washington and Montana. These states make up the majority of the wheat, barley and pulse crop producing land in this country. As ethanol production continues to increase, corn producers are seeing continuing service and capacity problems with rail movements of ddg's and ethanol. The barley, dry peas, lentils and chickpea industries continue to see railroads efforts to minimize less than trainload shipments. In Idaho, pulse crop and barley marketers continue to see greater equipment shortages at less than shuttle loading facilities even when they are adjacent to each other."

"We see value added agriculture having to invest in rail rolling stock to ensure adequate equipment supply, yet when the railroad service levels do not meet railroad supplied schedules, agriculture is being called upon to more ever increasing investment in railroad rolling stock."

"Because of these pockets of captivity, the cost of transporting grain can represent as much as 1/3 of the overall price a producer receives for his or her grain. This cost comes directly from a producer's bottom line. Producers, unlike other businesses cannot pass their costs on, as price takers and not price makers, producers bear all transportation costs both to and from the farm, and from the elevator to the processor or export terminal."

"The effect of this rail captivity is that rail rates in the Northern plains have increased 40% faster than the Rail Cost Adjustment Factor including productivity unadjusted. Where I farm, rail rates as a percentage of the price of wheat have risen from 16% in 1980 to over 30% today."

The **Alliance for Rail Competition** in its Statement by **Mike Grisso, Executive Director** to the SubCommittee talked about the capacity issues.

"Today we are told that the system is straining at the seams to move freight. At the same time the railroads are enjoying record profits and are all rated by Wall Street as "buy" items. Well, let's think about that. It seems that there is financial incentive for railroads keep capacity down therefore keeping prices high...and rising. It's like the hot new toy at Christmas. Everyone knows there won't be enough to go around, so they clamor for the available supply and bid up prices. This is really simple economics. And we just wonder how anyone could expect any business to expand its product...or service...knowing that the incremental price of that service would immediately fall."

"Seeing this force at work every day shippers have banded together for years now and asked for help from elected policy makers in Washington. For several years now shippers have been united in support of S. 919, the proposed Rail Competition Act, sponsored by Senators Burns, Rockefeller and Dorgan on this Committee as well as eight additional Senators. Shippers have rallied behind this bill not because we believe

it to be perfect, but because we believe it is a positive starting place for finding solutions to the country's freight rail transportation problems."

"Yes, this is the country's problem. "

"Yet, shippers have felt that their interests and their efforts to seek positive policy changes have been ignored by our leaders in Washington. Why? Is it because it's too hard? Is it because there isn't a real problem?"

"This is a time of turmoil in Washington and, in all candor, shippers are discouraged when they see lavish parties thrown for Congressional leaders in lush private rail cars at each of the major political conventions. Shippers are discouraged when they see on internet sites that railroads are very high on the list of providers of privately funded trips for Members of Congress and their families and staff. Shippers are discouraged when they do not find any relief at the Surface Transportation Board for years running, yet they watch STB commissioners fly off into the sunset on private planes owned by railroads. We suppose this is all legal...all within the rules...but it surely is discouraging. "

"Shippers believe that the intent of Congress in enacting the Staggers Act in 1980 was good. But we also believe that a series of unfortunate decisions made by appointed government functionaries has usurped the intent of elected officials like those who serve on this Committee. We are only asking our elected officials to correct these inequities and assert their primacy as the people's representatives. We are asking you to work with us, and the railroads, to find solutions which will propel competitive U.S. commerce through this new century. But it is imperative that you act. "

"This problem will not solve itself. The financial incentives are working in favor of a status quo that cannot be maintained. Sooner or later this will wind up at your doorstep. The only question is how much it will cost to solve. This is a burgeoning crisis that grows larger each day. So we ask you to act now, even incrementally, to avert crisis and improve the future. "

"Shippers are the canary in the coal mine. Seeing us in distress should send an alarm throughout the economy. The only question, it seems, is when you will respond to the alarm. We know that the problem is difficult, but the consequences of inaction are dire indeed. "

"The members of the Alliance for Rail Competition will meet with any parties, at any venue if it will further this debate and move in a positive direction. But we understand that railroads will continue to vociferously defend the "now"...even if it means eating their own future. Our elected policy makers must intervene for the good of the country...for the good of us all."

"Come let us reason together."